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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HOOPA VALLEY TRIBE,	)	Civ. No. 1:20-cv-1814-JLT-EPG
	)	
Plaintiff,	)	
	)	PLAINTIFF HOOPA VALLEY
v.	)	TRIBE'S SUPPLEMENTAL BRIEF
	)	
UNITED STATES BUREAU OF	)	
RECLAMATION; DEBRA ANNE HAALAND,	)	
in her official capacity as Secretary of the	)	
Interior; MARIA CAMILLE CALIMLIM	)	
TOUTON, in her official capacity as	)	
Commissioner of the United States Bureau of	)	
Reclamation; ERNEST A. CONANT, in his	)	
official capacity as United States Bureau of	)	
Reclamation California-Great Basin Regional	)	
Director; and UNITED STATES	)	
DEPARTMENT OF THE INTERIOR	)	
	)	
Defendants.	)	

**INTRODUCTION**

Plaintiff Hoopa Valley Tribe responds to the Court’s order requesting supplemental briefing. Dkt. #124. Hoopa’s claim that Defendants have unlawfully failed to honor Hoopa’s concurrence rights provided by statute in CVPIA § 3406(b)(23) (Dkt. #97, Claim 9), and Hoopa’s pending motion to preliminarily enjoin Defendants from taking action to approve or implement the Trinity River Winter Flow Variability Project (WFV Project) in the absence of seeking and obtaining Hoopa’s concurrence (Dkt. #108), are both justiciable and ripe for review.

On January 20, 2023, Defendants notified the Court that they imminently intend to make a decision to approve and implement the WFV Project. Dkt. #127. That notice confirms that Defendants have no intent to seek Hoopa concurrence. Defendants report: “If and when a determination is made by Interior, [Defendants] will file a separate notice notifying the Court and [Hoopa] that the Council’s recommendations are being adopted and that water releases will be made in no less than ten business days from the date of notice of adoption, which . . . would be February 13th at the earliest.” Dkt. #127, p. 3. This notice confirms that Defendants intend to adopt and commence the WFV Project without seeking or obtaining Hoopa concurrence.

It is undisputed that Defendants have failed to seek or obtain Hoopa concurrence on the WFV Project. Despite Hoopa’s multiple requests to Defendants to confirm and honor Hoopa’s concurrence right, both before and after filing its First Amended Complaint (FAC), Defendants have failed to seek Hoopa concurrence as required by CVPIA § 3406(b)(23). The federal advisory body Trinity Management Council (TMC) voted in favor of the WFV Project on December 7, 2022, over Hoopa’s opposition, and transmitted its recommendation to Defendants on December 9 with a proposed implementation date of December 15, 2022. Defendants did not seek Hoopa concurrence at that time, nor have they sought Hoopa’s concurrence in the weeks that have ensued. In their brief opposing Hoopa’s preliminary injunction motion (Dkt. #118), and in their motion to dismiss (Dkt. #125), Defendants made their substantive position clear: Defendants dispute and deny Hoopa’s right to concur under CVPIA § 3406(b)(23) and

Defendants do not intend to seek Hoopa concurrence regarding the WFV Project absent Court intervention. The recent notice filed January 20 further confirms that Defendants will not seek Hoopa concurrence. Defendants' failure to seek and obtain Hoopa concurrence, as required by statute, presents a cognizable claim pursuant to the Administrative Procedure Act (APA), which is remediable both under the APA and the Declaratory Judgment Act. 5 U.S.C. §§ 702, 706(1), 551(13), 28 U.S.C. §2201; *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55 (2004) [*SUWA*].

Hoopa's claim is also ripe for review. There is presently a real, substantial, and concrete dispute between the parties regarding the existence and scope of Hoopa's concurrence rights under CVPIA §3406(b)(23). Defendants plainly deny Hoopa's statutory concurrence rights. Dkt. #118; Dkt. #125, pp. 33-44, Dkt. #127. The question before the Court is purely legal; that is, can the Secretary of the Interior unilaterally act to modify Trinity River ROD (2000) flows in the absence of Hoopa concurrence required by § 3406(b)(23)? No further factual development is necessary to address this legal question. This legal dispute is not merely hypothetical or abstract. Defendants are on record that they deny Hoopa's concurrence rights and do not intend to seek Hoopa concurrence regarding the WFV Project. Dkt. #118; #125, pp. 33-44; #127. This statutory violation presents tangible immediate harm to Hoopa – loss of its sovereign rights. Also, absent adherence to Hoopa's concurrence rights, Defendants would be able to immediately implement the WFV Project, which will cause irreparable harm to Hoopa's interests in the Trinity River and its fishery. The legal dispute regarding the existence and scope of Hoopa concurrence rights provided by CVPIA §3406(b)(23) is ripe for judicial review.

### **ARGUMENT**

#### **A. Defendants Have Failed to Seek Hoopa's Concurrence as Required by Statute in CVPIA Section 3406(b)(23), Which Presents a Cognizable Claim Under the APA.**

Hoopa's Motion and Memorandum in Support of Preliminary Injunction (ECF Dkt. #108-1) explains that Congress, in CVPIA § 3406(b)(23), mandated that the Secretary of the Interior could only implement the permanent instream fishery flow recommendations, and associated operating criteria and procedures (OCAP), upon obtaining the concurrence of the

1 Hoopa Valley Tribe. As explained in Dkt #108-1, Hoopa concurred in a specific flow regime,  
2 including both total annual volumes and specific time periods for specific flow releases, as set  
3 forth in detail in the Trinity River ROD (ROD). Having obtained Hoopa's concurrence to  
4 implement the permanent flow requirements and OCAP required in the ROD, the Secretary  
5 cannot change those permanent flow requirements unless Hoopa concurs. Dkt. #108-1.

6 In 2021, Defendants proposed the WFV Project, which would substantially modify the  
7 permanent flow requirements and flow schedule mandated by the ROD and concurred in by  
8 Hoopa. On June 18, 2021, Hoopa wrote to Defendants: "The ROD's flow release hydrographs  
9 may not . . . be changed without [Hoopa] concurrence. . . . [Hoopa] does not concur in the  
10 proposed modification of ROD flow release hydrographs as currently proposed." Dkt. #110-1.  
11 On October 21, 2021, Hoopa again wrote to Defendants asking them to halt any administrative  
12 action on the WFV Project, because: "Any change in the 2000 ROD, including reallocation of  
13 Trinity River water, requires Hoopa's concurrence pursuant to Section 3406(b)(23) of the  
14 [CVPIA]. Reclamation has never sought, let alone obtained Hoopa's concurrence in the  
15 proposal." Dkt. #110-2. Defendants ultimately pulled the WFV Project from consideration for  
16 the 2022 water year, but did not seek Hoopa concurrence at any time.

17 In late 2022, Defendants again proposed the WFV Project but did not ever seek Hoopa  
18 concurrence. On October 4, 2022, Hoopa met with Defendants regarding Hoopa's concurrence  
19 right and followed up with a letter reiterating Hoopa's view that the WFV Project is subject to  
20 and cannot proceed absent the Secretary seeking and obtaining Hoopa concurrence. Dkt. #110-3.  
21 On December 7, 2022, the federal advisory Trinity Management Council (TMC) voted (over  
22 Hoopa's vote in opposition) to recommend implementation of the WFV Project for the 2023  
23 water year, with implementation to commence as early as December 15, 2022. Orcutt Decl.,  
24 Dkt. #109, ¶ 16. On December 9, 2022, the TMC forwarded their recommendation for approval  
25 of the WFV Project and implementation commencing December 15, 2022, to Defendants. Dkt.  
26 #109-1. On the same day, December 9, 2022, Hoopa wrote a letter to Secretary Haaland, stating

1 that the Secretary's "authority to implement the [WFV Project] . . . is subject to your obtaining  
2 [Hoopa's] concurrence pursuant to CVPIA section 3406(b)(23)." Dkt. #110-4. On December  
3 14, 2022, Hoopa again wrote to Secretary Haaland asking her to "confirm[] in writing to Hoopa  
4 that Hoopa's right of concurrence is valid and binding on the Secretary of the Interior, that the  
5 Secretary will direct her officers and agents to seek Hoopa's concurrence in the WFV project,  
6 and if Hoopa does not concur, the WFV project shall not be implemented." Dkt. # 110-5.  
7 Absent such confirmation, Hoopa advised it would seek preliminary injunctive relief to enjoin  
8 the WFV Project in absence of Hoopa concurrence. *Id.* Hoopa did not receive the response it  
9 requested from the Secretary, but instead Hoopa received a communication from Defendants'  
10 attorneys that: "[the Interior Department/Defendants] commit to give [Hoopa] at least 5 business  
11 days notice before any *decision* is made with respect to the Trinity River (sic) Council's vote to  
12 recommend the winter flows, and at least 10 business days notice before the *implementation* of  
13 any such decision." Dkt. # 111-7 (emphasis added). On January 20, 2023, Defendants provided  
14 notice of their intent to imminently decide on (and likely adopt) the WFV Project. Dkt. #127.

15         Given the Defendants' failure to seek concurrence required by statute and the imminent  
16 threat of implementation of the WFV Project without Hoopa concurrence, Hoopa filed a motion  
17 for preliminary injunction on December 16, 2022, noting a hearing date of January 20, 2023. As  
18 of today's date, Defendants have still failed to seek Hoopa's concurrence relating to the WFV  
19 Project. And Defendants have made clear in their preliminary injunction opposition (Dkt. #118),  
20 their motion to dismiss (Dkt. #125), and their January 20 notice (Dkt. #127) that they deny that  
21 Hoopa has any continuing concurrence right under CVPIA §3406(b)(23). A live dispute exists  
22 relating to the existence and scope of Hoopa concurrence rights under CVPIA §3406(b)(23).

23         Defendants' failure to seek and obtain Hoopa concurrence as related to the WFV Project  
24 presents a cognizable failure to act under the APA. The APA authorizes suit by "[a] person  
25 suffering legal wrong because of agency action, or adversely affected or aggrieved by agency  
26 action within the meaning of a relevant statute." 5 U.S.C. §702. The APA includes a "failure to

act” within the definition of “agency action.” 5 U.S.C. §551(13). In remedying a failure to act under the APA, the Court is authorized to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §706(2). Also, under 28 U.S.C. §2201, the Court “may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” And if Defendants approve the WFV Project in absence of Hoopa concurrence, as they appear poised to do, such approval also separately constitutes unlawful final agency action challengeable and remediable under the APA. 5 U.S.C. §§ 702, 706.

In *SUWA*, the Supreme Court clarified that claims arising from an agency’s “failure to act,” consist of claims asserting “that an agency failed to take a *discrete* agency action that it is *required to take*.” 542 U.S. at 64. Those requirements are met here. The Secretary is required by statute, CVPIA § 3406(b)(23), to seek and obtain the concurrence of the Hoopa Valley Tribe before the Secretary may substantively modify the permanent flow requirements or OCAP set forth in the Trinity River ROD. The discrete failure to act at issue here is the Secretary’s failure (despite multiple requests from Hoopa leadership, and the statutory requirement) to seek and obtain Hoopa’s concurrence as related to the WFV Project proposals, both in 2021 and 2022.<sup>1</sup>

In addition to being a discrete action, seeking and obtaining Hoopa concurrence is also one that the Defendants are legally required to take. The obligation to seek *and obtain* Hoopa concurrence is not discretionary; rather, it is mandated by Congress in CVPIA §3406(b)(23). *See also Vietnam Veterans of Am. v. CIA*, 811 F.3d 1068, 1079 (9<sup>th</sup> Cir. 2016) (APA permits claim “where a federal agency refuses to act in disregard of its legal duty to act”); *Hells Canyon Pres. Council v. U.S. Forest Service*, 593 F.3d 923, 932 (9<sup>th</sup> Cir. 2010) (court may compel agency action under APA 706(1) “where agency has ignored a specific legislative command”).

Defendants conduct shows they have made a final decision to not seek Hoopa

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<sup>1</sup> In *SUWA*, plaintiffs alleged that federal defendants failed to comply with broad management directives that vested the federal agency with considerable discretion in how to achieve those directives. Here, unlike in *SUWA*, Hoopa challenges the Secretary’s failure to take a single discrete action required by statute – that is, the obligation to seek and obtain Hoopa concurrence.

1 concurrence. That Defendants have not yet published a written decision rejecting Hoopa's  
2 concurrence right does not preclude review of their failure to seek Hoopa's concurrence. *Bhd.*  
3 *Of Locomotive Eng/rs & Trainmen v. FRA*, 972 F.3d 83, 100 (D.C. Cir. 2020) (agency action can  
4 be final and judicially reviewable despite absence of written memorialization of decision). Here,  
5 despite the lack of a written decision, Defendants have made their final position on Hoopa  
6 concurrence authority clear. At no time during the Secretary's consideration of the WFV Project  
7 (either in 2021 or 2022) did the Secretary seek Hoopa's concurrence. The TMC recommendation  
8 of approval of the WFV Project occurred seven weeks ago, on December 7, 2022, and the WFV  
9 Project was designed to commence implementation as of December 15, 2022. At no time since  
10 that recommendation, despite multiple requests by Hoopa, has the Secretary sought Hoopa  
11 concurrence. And it is clear, based on the Defendants' filings on the preliminary injunction  
12 motion, their motion to dismiss, and their January 20 notice, that Defendants vigorously dispute  
13 and deny that such a right of concurrence exists. Hoopa is entitled to pursue its claim under the  
14 APA alleging that Defendants have unlawfully failed to seek and obtain Hoopa's concurrence as  
15 is mandated by CVPIA §3406(b)(23). And if the Secretary proceeds to approve and commence  
16 implementation of the WFV Project without Hoopa concurrence, as she is poised to do, that  
17 would also be unlawful final agency action in violation of CVPIA §3406(b)(23) and the APA.

18 The APA cause of action arises under 5 U.S.C. §702. The APA provides remedies in 5  
19 U.S.C. §706(1), (2), including a remedy to compel agency action unlawfully withheld or  
20 unreasonably delayed. Thus, here, if Hoopa prevails on the merits of its claim, the Court is  
21 authorized to direct the Secretary to seek and obtain Hoopa concurrence as a mandatory  
22 prerequisite to modifying the ROD's permanent instream flow requirements or OCAP. The  
23 Court also has remedial authority under the Declaratory Judgment Act, 28 U.S.C. §2201, which  
24 authorizes the Court to determine and declare that Hoopa does retain concurrence authority  
25 under CVPIA §3406(b)(23) and that the Secretary may not modify ROD flows or OCAP in the  
26 absence of such concurrence. Further, the Court has equitable authority to preserve the status

1 quo to enjoin implementation of the WFV Project in the absence of Hoopa concurrence required  
2 by statute. Hoopa has a valid cause of action under the APA to challenge the Secretary's failure  
3 to seek and obtain Hoopa concurrence pursuant to CVPIA §3406(b)(23) as related to the WFV  
4 Project. And it may seek both declaratory and injunctive relief pursuant to that valid APA claim.

5 B. Hoopa's Claim Regarding Its Concurrence Right Under CVPIA §3406(b)(23) is Ripe.

6 The doctrine of ripeness addresses the timing of when a suit can be brought. *Anderson v.*  
7 *Green*, 513 U.S. 557, 559 (1995). The doctrine requires that, for a suit to be ripe within the  
8 meaning of Article III of the U.S. Constitution, "it must present 'concrete legal issues, presented  
9 in actual cases, not abstractions.'" *Colwell v. HHS*, 558 F.3d 1112, 1123 (9<sup>th</sup> Cir. 2009), quoting  
10 *United Pub. Workers v. Mitchell*, 330 U.S. 75, 89 (1947). If the minimum constitutional element  
11 is met, courts may further evaluate, as prudential considerations, "both the fitness of the issues  
12 for judicial decision and the hardship to the parties of withholding court consideration." *Ass'n of*  
13 *Am. Med. Colleges v. United States*, 217 F.3d 770, 779-80 (9<sup>th</sup> Cir. 2000). Here, a real, live, and  
14 concrete dispute exists between Hoopa and Defendants as to the existence and scope of Hoopa's  
15 concurrence right provided by CVPIA §3406(b)(23).

16 Over the past eighteen months, Hoopa has repeatedly asked the Secretary to seek and  
17 obtain Hoopa concurrence relating to the Defendants' WFV Project proposals. The Secretary  
18 has failed to do so. In the past month, Defendants have filed legal briefs that expressly dispute  
19 and deny that Hoopa has a continuing right of concurrence under CVPIA §3406(b)(23). *See* Dkt.  
20 ##118, 125, 127. The question of Hoopa's statutory concurrence rights under CVPIA  
21 §3406(b)(23) is a principally legal question that does not require any further factual development  
22 beyond what is already in the record before the Court. Hoopa's sovereignty is currently being  
23 harmed by Defendants' failure to recognize and honor its sovereign right of concurrence and  
24 Hoopa's resources are at imminent risk of harm if Defendants proceed to approve and commence  
25 implementation of the WFV Project in absence of Hoopa concurrence.

26 A case is sufficiently ripe, to satisfy the "case-or-controversy" requirements of Article III

of the U.S. Constitution if there is (1) a legal dispute that is real and not hypothetical; (2) a concrete factual predicate to allow for a reasoned adjudication; and (3) a legal controversy that can sharpen the issues for judicial resolution. Moore’s Federal Practice (3d. ed.), Vol. 15, §101.75 (2018). The Supreme Court has described the line of demarcation between concrete disputes and abstract advisory opinions as follows:

The difference between an abstract question and a controversy . . . is necessarily one of degree, and it would be difficult, if it would be possible, to fashion a precise test for determining in every case whether there is such a controversy. Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality.

*Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941). The Ninth Circuit has explained that ripeness is closely related to injury-in-fact in standing.<sup>2</sup> In other words, a case is sufficiently ripe if the issues presented are definite and concrete, not hypothetical or abstract and where the plaintiff has shown a realistic danger of sustaining a direct injury as a result of the allegedly unlawful action. *Thomas v. Anchorage Equal Rts. Comm’n*, 220 F.3d 1134, 1138 (9<sup>th</sup> Cir. 2000); *Cal Pro-Life Council, Inc., v. Getman*, 328 F.3d 1088, 1094 n.2 (9<sup>th</sup> Cir. 2003).

Defendants dispute and deny Hoopa’s right of concurrence. They assert that the Secretary may unilaterally approve and implement the WFV Project without Hoopa’s concurrence. Defendants have confirmed, through their continued failure to seek Hoopa concurrence, and through their recent court filings that they do not intend to seek Hoopa’s concurrence. Hoopa is currently suffering injury to its sovereignty from Defendants failure to honor Hoopa’s right of concurrence provided by statute and is at risk of suffering imminent irreparable injury to its water and fish resources if the Secretary proceeds to approve and implement the WFV Project without Hoopa concurrence. The dispute regarding Hoopa’s concurrence rights is a real and

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<sup>2</sup> Defendants’ recent motion to dismiss argues (incorrectly, in Plaintiff’s view) that Plaintiff lacks standing to pursue numerous claims alleged in its FAC, but Defendants did not argue that Plaintiff lacks standing to pursue its Ninth Claim for Relief, relating to concurrence. Nor did Defendants assert that the Ninth Claim is non-justiciable on ripeness or any other grounds.

1 concrete legal dispute that satisfies the minimum constitutional prerequisites for ripeness.

2       The discretionary prudential criteria also support ripeness. This dispute is fit for judicial  
3 review because it involves primarily legal issues and would not benefit from further factual  
4 development. *Wolfson v. Brammer*, 616 F.3d 1045, 1060 (9<sup>th</sup> Cir. 2010) (dispute was ripe where  
5 it was primarily issue of law); *Hawaii Newspaper Agency v. Bronster*, 103 F.3d 742, 746-747  
6 (9<sup>th</sup> Cir. 1996) (same). In *Navajo Nation v. United States DOI*, 819 F.3d 1084 (9<sup>th</sup> Cir. 2016), the  
7 plaintiff Indian tribe challenged the government’s failure to repatriate cultural items. Instead, the  
8 government proceeded to inventory the items, reserving decision on their ultimate disposition.  
9 The Court found the dispute ripe, even though the government had made no final decision on  
10 disposition of the items, because the dispute presented a purely legal question of who should  
11 control the items – the Tribe or the United States. *Id.* at 1095. Here, the dispute involves the  
12 purely legal question of whether Hoopa retains a right of concurrence pursuant to CVPIA  
13 §3406(b)(23) or whether the Secretary has authority to unilaterally modify ROD flows without  
14 seeking or obtaining Hoopa’s concurrence.

15       A decision is fit for review when no further factual development is necessary to  
16 adjudicate the legal issue in dispute. For example, a claim that a federal agency has failed to  
17 reinstate consultation under the Endangered Species Act is ripe at the time the legal failure takes  
18 place. *Cottonwood Env'tl. Law Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1084 (9<sup>th</sup> Cir. 2015).  
19 Similarly, a claim that a federal agency failed to complete review required by NEPA is ripe at the  
20 time of that failure and need not await commencement of the project. *West v. Secretary*, 206  
21 F.3d 920, 930, fn. 14 (9<sup>th</sup> Cir. 2000). *See also Ohio Forestry Ass’n v. Sierra Club*, 523 U.S. 726,  
22 737 (1998) (“a person with standing who is injured by a failure to comply with the NEPA  
23 procedure may complain of that failure at the time the failure takes place, for the claim can never  
24 get riper”). While the claim here does not arise under the ESA or NEPA, it similarly involves a  
25 statutory mandate (i.e., the seeking and obtaining of Hoopa concurrence) that must precede  
26 agency action. Here, Defendants have failed to seek such concurrence and maintain that they are

1 not legally required to do so. Hoopa's claim can get no riper. No further factual development is  
2 necessary to resolve this legal question. The question is now fit for decision by the Court.

3 The fact that Defendants have not, as of today, acted on the TMC recommendation to  
4 approve the WFV Project does not render this dispute regarding Hoopa's concurrence rights  
5 unripe. Defendants have failed to seek Hoopa's concurrence despite multiple requests by Hoopa  
6 to do so. Defendants have made their position clear in their recent legal briefs that they dispute  
7 and deny Hoopa's concurrence right. And Defendants have notified the Court that they intend to  
8 imminently proceed ahead on the WFV Project and could commence implementation as early as  
9 February 13. Dkt. #127. *See also* Moore's Federal Practice (3d ed), Vol. 15, §101.76[1][c]  
10 (2018) ("a case may be considered ripe for judicial review, even in the absence of final agency  
11 action, when no compelling judicial interest exists to defer review"). Here, the constitutional  
12 minimums are met and there is no prudential basis or benefit to avoid or delay judicial decision.

13 Hoopa will also suffer hardship if a decision is not rendered at this time. "'Hardship'  
14 means something that violates a legal right or harms the plaintiff in a practical way.'" Moore's  
15 Federal Practice (3d ed.) §101.76[2]. *See also Navajo Nation*, 819 F.3d at 1095 (government's  
16 continued possession of disputed cultural items caused hardship to Navajo because "Navajo  
17 believe that exhumation 'causes illness[,] . . damages crops, natural ecosystems and the  
18 environment"). Here, Defendants failure to seek or obtain Hoopa concurrence, and their  
19 affirmative denial of Hoopa's concurrence rights, expressly violates the right provided to Hoopa  
20 by Congress in CVPIA §3406(b)(23). It directly and immediately negates Hoopa governmental  
21 authority and sovereignty. Defendants' position effectively terminates, unlawfully, Hoopa's  
22 sovereign right of concurrence provided by statute. Failure to adjudicate this issue now will  
23 cause hardship to Hoopa. The dispute regarding Hoopa concurrence authority is ripe for review.

### 24 **CONCLUSION**

25 Hoopa requests that the Court proceed to adjudicate Plaintiff's Motion for Preliminary  
26 Injunction and grant Hoopa's requested preliminary injunction on or before February 10, 2023.

1 DATED this 25th day of January, 2023.

2 MORISSET, SCHLOSSER, JOZWIAK & SOMERVILLE

3 /s/ Thane D. Somerville

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12 Attorneys for Plaintiff Hoopa Valley Tribe

**CERTIFICATE OF SERVICE**

I hereby certify that on January 25, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Thane D. Somerville  
Thane D. Somerville